

Kirkpatrick & Lockhart LLP

ORIGINAL

Payne Shoemaker Building
240 North Third Street
Harrisburg, PA 17101-1507
717.231.4500
www.kl.com

February 22, 2002

David R. Fine
717.231.5820
Fax: 717.231.4501
dfine@kl.com

BY HAND DELIVERY

The Honorable Yvette Kane
U.S. District Court for
the Middle District of Pennsylvania
228 Walnut Street
Harrisburg, PA 17108

FILED
HARRISBURG, PA

FEB 22 2002

MARY E. D'ANDREA, CLERK
Per  Deputy Clerk

Re: Cotton v. Three Rivers Health Plans, Inc., No. 00-1709

Dear Judge Kane:

I hope you will allow us a brief response to Plaintiff's citation to *Neal v. Lu*, 530 A.2d 103 (Pa. Super. 1987).

Simply put, the decision interprets a Pennsylvania procedural rule (Pa.R.C.P. 4003.5) and has nothing at all to do with federal procedure. The one reference to the federal rules in the case is to Fed. R. Civ. P. 26(b)(4), and that reference is immaterial. Rule 26(b)(4) does not govern this question. Rule 26(a)(2) expressly requires disclosure of **any** witness who will give testimony under Fed. R. Evid. 702 (in other words, expert testimony). That rule suggests no exceptions, and Dr. Cotton has acknowledged that he did not disclose himself or anyone else as an expert.

Rule 26(a)(2) is explicit and binding. Dr. Cotton's reference to a decision of an intermediate Pennsylvania appellate court is without merit. The Court should not allow Dr. Cotton (or anyone testifying on his behalf) to offer expert testimony.

Very truly yours,


David R. Fine

cc: William E. Haggerty, Esq.